

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923

No. 187

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THE STATE OF KANSAS ON THE RELATION OF FRED S.  
JACKSON, ATTORNEY FOR THE PUBLIC UTILITIES  
COMMISSION OF THE STATE OF KANSAS, ETC., AP-  
PELLANT,

vs.

THE CENTRAL TRUST COMPANY OF NEW YORK, KANSAS  
NATURAL GAS COMPANY, AND CONSUMERS LIGHT,  
HEAT & POWER COMPANY.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

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FILED OCTOBER 19, 1923.

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(29.202)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 652.

THE STATE OF KANSAS ON THE RELATION OF FRED S. JACKSON, ATTORNEY FOR THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS, ETC., APPELLANT,

vs.

THE CENTRAL TRUST COMPANY OF NEW YORK, KANSAS NATURAL GAS COMPANY, AND CONSUMERS LIGHT, HEAT & POWER COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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IN THE  
**District Court of the United States for the District of Kansas,  
First Division.**

In Equity. No. 75-N.

CENTRAL TRUST COMPANY OF NEW YORK, Complainant,

VS.

CONSUMERS LIGHT, HEAT & POWER COMPANY, Defendant.

**Citation on Appeal and Service.**

[Filed Oct. 3, 1922.]

UNITED STATES OF AMERICA, ss:

To the Central Trust Company of New York and the Kansas Natural Gas Company and the Consumers Light, Heat & Power Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 19th day of October A. D. 1922, pursuant to an order allowing an appeal filed and entered in the clerk's office of the district court of the United States for the district of Kansas, First Division, from a final decree signed, filed and entered on the 16th day of June, 1922, in that certain suit, being in equity No. 75-N, wherein the Central Trust Company of New York is complainant and you are defendants and appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable John C. Pollock, United States District Judge for the District of Kansas, First Division, this 19th day of Sept. 1922, and of the Independence of the United States the 146th. John C. Pollock, U. S. District Judge for the District of Kansas, First Division.

2 We hereby acknowledge service of the within citation, this 21st day of September, 1922. Thomas F. Doran, Attorney for G. J. Swan, Receiver of The Consumers Light, Heat and Power Co. Blair & Lillard, Attorneys for Central Trust Co. H. O. Caster, Robt. D. Garver, Attorney- for Kansas Natural Gas Co.

2½ [File endorsement omitted.]

3 In the District Court of the United States for the District of  
Kansas, First Division.

[Title omitted.]

**Petition.**

[Filed Apr. 19, 1922.]

Comes now G. J. Swan, Receiver of The Consumers Light, Heat and Power Company, duly appointed by and acting under authority of this Court, and respectfully shows:

1. That the Consumers Light, Heat and Power Company is now, and for many years last past has been, through a Receiver duly appointed by and acting under the direction and authority of this Court, engaged in the business of purchasing, distributing and selling natural gas in the cities of Topeka and Oakland, Kansas.

2. That all of the natural gas sold and distributed in the cities of Topeka and Oakland is purchased from The Kansas Natural Gas Company, which is your petitioner's only source of supply.

3. That your petitioner has been and is now paying to The Kansas Natural Gas Company 35¢ per thousand cubic feet for all gas delivered to your petitioner at the city gates of the city of Topeka, Kansas, which city gate rate has been approved as a proper operating expense by the order of the Court of Industrial Relations (now the Public Utilities Commission) of August 18, 1920.

4. That your petitioner is now, and has been since January 1, 1921, charging consumers of natural gas in the cities of Topeka and Oakland, 80¢ per thousand cubic feet of gas consumed, plus a customer's charge of 75¢ per meter per month.

5. Your petitioner further shows, that the rate now being charged was installed by L. G. Treleven, predecessor of this petitioner as receiver, after the rate fixed by the Court of Industrial Relations of the State of Kansas (now the Public Utilities Commission) in its order of August 18, 1920 (to-wit: 80¢ per thousand cubic feet) had been enjoined by this court as confiscatory, Judge Wilbur F. Booth sitting.

6. That after the installation of the present rate by the then receiver of this court, the Public Utilities Commission of the State of Kansas (which succeeded the Court of Industrial Relations) on its own initiative instituted a proceeding to investigate the reasonableness of the present rate (80¢ per thousand cubic feet of gas consumed, plus a monthly customer charge of 75¢).

In this proceeding due notice was given to all parties concerned and hearings had before the Public Utilities Commission which resulted in an order of the Public Utilities Commission of July 1, 1921, holding that:

"The rate of 80 cents per thousand cubic feet of gas furnished its consumers in said cities (Topeka and Oakland) based on an annual

leakage of 200,000 cubic feet per mile of 3 inch equivalent, is a fair and compensatory rate for the service rendered by said company."

In addition to the 80¢ rate thus fixed by the order of the Public Utilities Commission of July 1, 1921, that order provided that a reasonable sum for carrying on a campaign to reduce the leakage during the next twelve months was forty-eight thousand dollars, and then recited:

"It is by the Commission further ordered that said Consumers Light, Heat and Power Company be and it is authorized to collect a service or customers' charge from each of its customers in the sum of 35 cents per month; provided, however, that said service or customers' charge shall be placed in and accounted for as a separate item of account, and shall be used by said Consumers Light, Heat and Power Company through its receiver in his campaign to reduce the leakage of its distributing system to the fixed standard of 200,000 cubic feet per mile of 3 inch equivalent, and said fund shall be used for no other purpose; and provided, further, that the period for which such service or customers' charge may be collected is limited by this order to 12 months from the date hereof \* \* \*"

7. That within thirty days after the entry of said order of the Public Utilities Commission, your petitioner, G. J. Swan, filed suit in this court to enjoin said order on the ground that the same is unremunerative, wasteful and confiscatory of the property in the hands of your receiver; that a temporary restraining order was issued 5 by this Court, Judge John H. Cottrell sitting; that thereafter, by stipulation of the parties, this suit was tried by this Court, Judge Wilbur F. Booth sitting; that printed briefs have been submitted to Judge Booth by the parties to said action; that the same is now pending awaiting the decision and decree of Judge Booth, who has advised the parties thereto that on account of other engagements said decision cannot be handed down until the latter part of May or the first part of June, 1922.

8. That on the first day of April, 1922, your petitioner, G. J. Swan, received written notice from The Kansas Natural Gas Company, that from and after the April 1922 meter reading its price for gas delivered to your petitioner at the city gates of the City of Topeka would be increased from 35¢ to 40¢ per thousand cubic feet. A true and correct copy of said notice is as follows:

"Kansas Natural Gas Company.

Bartlesville, Oklahoma, April 1, 1922.

"Consumers Light, Heat & Power Co., Topeka, Kansas.

"GENTLEMEN: You are hereby notified that on and after April, 1922, meter reading you will be charged at the rate of forty cents per thousand cubic feet for all gas delivered to you at the town border measuring station, gas to be computed on a temperature basis of sixty degrees Fahrenheit, and a pressure basis of eight ounces atmospheric pressure, atmospheric pressure being assumed to be 14.41 pounds per

square inch. Very truly yours, Kansas Natural Gas Co. By H. L. Montgomery."

9. Your petitioner further shows that he is not advised, and has no means of ascertaining, whether said increase of rate to The Kansas Natural Gas Company established by said notice, is necessary to yield to The Kansas Natural Gas Company a just and reasonable return on its investment used and useful in the service of your petitioner; but your petitioner believes and therefore alleges the fact to be, that said increased rate is excessive and unreasonable.

10. That this petition is filed in this case for the purpose of protecting the property now in the possession of this Court through its Receiver, and of enforcing the jurisdiction of this Court in the administration of the property of The Consumers Light, Heat and Power Company now in the hands of your petitioner as Receiver of this Court; and for the purpose of submitting to this Court the question whether the increased rate demanded by The Kansas Natural Gas Company is a just and reasonable rate to be paid by this Receiver for natural gas, and for the purpose of obtaining the decree and direction of this Court whether the same shall be paid.

11. That the matter and amount in controversy in this cause exceeds the sum of three thousand dollars, exclusive of interest and costs; and that the cause of action herein stated arises under the Constitution and Laws of the United States.

12. That this petition is filed against The Kansas Natural Gas Company for the purpose of restraining and enjoining said company from requiring this plaintiff to observe the increased rate established by said The Kansas Natural Gas Company until said Kansas Natural Gas Company shall have shown to this Court that said charge or rate is just and reasonable, and until the same has been approved by this Court as a proper operating expense to be paid by this Receiver; and your petitioner shows that the business of The Kansas Natural Gas Company, in the transportation and sale of natural gas has been declared by the Supreme Court of the United States to be interstate commerce, and therefore is subject to the sole and exclusive jurisdiction of the federal courts, and that this court is the only court, tribunal or body to which your petitioner can resort for relief, as the Public Utilities Commission of the State of Kansas has no jurisdiction over the rates fixed and established by The Kansas Natural Gas Company; that said petitioner has no adequate remedy at law and that for this reason this action is brought; and your petitioner

shows that if compelled to pay said added charge or rate the same will make the business of your petitioner in the sale and distribution of natural gas in the cities of Topeka and Oakland, unremunerative, non-compensatory and confiscatory under the rates now being charged by your petitioner, and under the rates established for your petitioner by the Public Utilities Commission of the State of Kansas in its order of July 1, 1921, the reasonableness of which rate is now being contested in this court, Judge Wilbur F. Booth, sitting.

That if said rate established by The Kansas Natural Gas Company

in said notice is made effective, under the present rates, or under the rates fixed by the Commission in its order of July 1, 1921, it will amount to the taking of the property in the possession and control of this petitioner without compensation, and without due process of law, in violation of the rights of your petitioner and of The Consumers Light, Heat and Power Company under the provisions of the first section of the 14th Amendment of the Constitution of the United States, which provides that:

"No state shall deprive any person of \* \* \* property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And in violation of the provisions of the Fifth Amendment of the Constitution of the United States which provides that:

"No person shall \* \* \* be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

13. Your petitioner further shows that until it shall be determined by this court whether your petitioner shall pay the increased rate demanded by The Kansas Natural Gas Company, and until it shall be determined by Judge Booth in the case now pending before him, whether your petitioner shall collect the present rate charged consumers, or the consumers' rate fixed by The Public Utilities Commission of Kansas in its order of July 1, 1921, there is no basis on which your petitioner can make application to The Public Utilities Commission of the State of Kansas, or to any other tribunal than this Court, for an order protecting the property in the hands of this Receiver pending the determination of this cause and of the cause now under consideration by Judge Booth.

14. That because of the impossibility of forecasting the result of this suit and of the action before Judge Booth, it is necessary that this Court, acting in equity, by its administrative order fix such increased rate to be charged consumers in the cities of Topeka and Oakland as shall be shown to this Court to be necessary to yield a reasonable return on the property in the hands of this Receiver, used and useful in the distribution of natural gas to consumers, in the event that said suits or either of them shall be determined adversely to this petitioner, to be effective until said suits are finally determined, and until such time as shall be necessary thereafter to enable this petitioner to make application to The Public Utilities Commission of the State of Kansas for a permanent and remunerative rate to your petitioner for natural gas sold to consumers in the cities of Topeka and Oakland, and until an order shall be entered by The Public Utilities Commission of the State of Kansas establishing such permanent and remunerative rate.

15. Your petitioner further shows that for the purposes aforesaid it is necessary that this Court, by its administrative order, authorize this petitioner to increase the present consumers' rate from 80¢ per thousand cubic feet of gas consumed, plus a 75¢ monthly customer charge, to 90¢ per thousand cubic feet of gas consumed, plus a 75¢ monthly customer charge, or such other form of rate as shall yield an equal return; and that said increase allowed by this Court in

its said administrative order should be collected by your petitioner, and under order of this court impounded in a responsible bank designated by this court, until it shall be determined whether said fund shall be paid to your petitioner to meet the added cost of gas, if finally determined to be reasonable, or returned to the consumer, if found to be unreasonable.

Wherefore, your petitioner prays:

1. That subpoena issue out of this Honorable Court, directed to  
9 The Kansas Natural Gas Company as defendant herein, requiring and commanding it to appear in this cause on a day certain and answer the several allegations of this petition, and requiring and commanding that said defendant show by competent evidence whether the increased rate demanded of your petitioner by it in its notice dated April 1, 1922, is necessary, just and reasonable.

2. That a temporary restraining order be issued herein, restraining and enjoining the defendant, The Kansas Natural Gas Company, from collecting, or attempting to collect, from this petitioner the increased rate named in its notice dated April 1, 1922, until it shall be determined by this Court whether the increased rate demanded by said defendant is just and reasonable, and that if it shall be determined by this Court that the increased rate demanded by said defendant is unjust and unreasonable, your petitioner prays that the temporary injunction herein granted shall be made perpetual.

3. Your petitioner further prays that pending the determination of all questions herein presented in the manner alleged, this Honorable Court by its administrative order direct this petitioner, as Receiver of The Consumers Light, Heat and Power Company, to demand and collect from consumers of natural gas in the cities of Topeka and Oakland, 90¢ per thousand cubic feet for all gas sold and consumed by them, plus a monthly customer charge of 75¢ or such other form of rate as shall yield an equal return; and that all funds derived from the increase allowed by the administrative order of this Court be by this petitioner impounded in such bank as shall be designated by order of this Court, to be held as a trust fund and paid to this petitioner or returned to consumers as equity shall demand, on the final determination of this cause and the cause now pending before Judge Booth, and until thereafter, on application of this petitioner, a just and remunerative permanent rate shall be established to said consumers by The Public Utilities Commission of the State of Kansas.

10 4. Your petitioner further prays that the defendant, The Kansas Natural Gas Company, its officers, attorneys and agents, be restrained and enjoined from commencing, instituting or prosecuting in any other court or tribunal any suit or proceeding to litigate any of the matters herein alleged and complained of, arising or growing out of any of the transactions or matters herein alleged, until the final determination of this suit.

5. Plaintiff prays for such other and further relief in the premises as to this Honorable Court may seem equitable and just. G. J. Swan, Receiver of The Consumers Light, Heat and Power Company. By Thomas F. Doran, His Attorney.

**Temporary Restraining Order.**

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STATE OF KANSAS,  
*Shawnee County, ss:*

G. J. Swan, being duly sworn, upon oath states, that he is the duly appointed and acting receiver of The Consumers Light, Heat and Power Company of Topeka, Kansas; that he is plaintiff in the above entitled action; that he has read the above and foregoing petition and knows the contents thereof; that he is familiar with the matters and things therein set out, and that the statements and averments therein contained are true. G. J. Swan.

Subscribed and sworn to before me this 19th day of April, A. D. 1922. Louie M. Bagley, Notary Public. (Seal.) My commission expires Nov. 26, 1924.

[File endorsement omitted.]

11 In United States District Court.

**Temporary Restraining Order.**

[Filed Apr. 19, 1922.]

Now, on this 19th day of April, A. D. 1922, the above entitled cause came regularly on for hearing on the duly verified petition of G. J. Swan, Receiver of The Consumers Light, Heat and Power Company, filed herein, and the relief demanded in said petition; and the Court, having heard the statements of counsel, and having carefully examined said verified petition, and being fully advised in the premises, finds:

1. That a subpoena should issue out of this court, directed to The Kansas Natural Gas Company as defendant herein, requiring and commanding it to appear in this cause on a day certain and answer the several allegations of plaintiff's petition herein, and requiring and commanding said defendant to show by competent evidence whether the increased rate demanded of plaintiff herein, G. J. Swan, Receiver of The Consumers Light, Heat and Power Company, in its notice of April first, 1922, is a necessary, just and reasonable charge to be made and collected.

2. That a temporary restraining order should be issued herein, restraining and enjoining the defendant, The Kansas Natural Gas Company, from collecting or attempting to collect the increased rate named in its notice to the plaintiff of April 1, 1922, until it shall be determined by this Court, whether the increased rate demanded by said defendant is a just and reasonable charge to be collected, and a just and reasonable price to be paid by the plaintiff for gas received from The Kansas Natural Gas Company.

3. That this cause be set down for hearing of evidence on a day certain which will enable this court to determine whether the plaintiff herein, G. J. Swan, Receiver of The Consumers Light, Heat and Power Company, should be authorized and directed by this Court to



increase the present consumers' rate in the cities of Topeka and Oakland, and if so to determine what the amount of such increase shall be; and whether the funds arising from said increase, if allowed, should be impounded as a trust fund to be paid to the petitioner if

the rate herein demanded by The Kansas Natural Gas Company shall be found to be just and reasonable, or shall be returned to the consumers of gas if said increased city gate rate shall be determined by this Court to be unjust and unreasonable.

4. That The Kansas Natural Gas Company, its officers, attorneys and agents, should be restrained from commencing, instituting or prosecuting in any other court or tribunal any suit or proceedings to litigate any of the matters herein alleged and complained of, arising or growing out of any of the transactions or matters herein alleged, until the final determination of this suit.

Wherefore, it is considered and ordered by the court:

1. That the Clerk of this Court issue a subpoena herein, directed to The Kansas Natural Gas Company as defendant, commanding it to appear and answer in this cause, to make due showing whether the increased rate for gas fixed by its said notice of April first, 1922, is a necessary, just and reasonable charge to be paid by the plaintiff herein.

2. That the defendant, The Kansas Natural Gas Company, its agents, officers and attorneys, are temporarily restrained and enjoined from collecting or attempting to collect from the petitioner herein the increased rate named in the notice of The Kansas Natural Gas Company to the plaintiff, dated April 1, 1922, until the further order of this court.

3. That this case is set down for hearing of evidence, on application for a temporary injunction and on the 18 day of May, 1922, to enable this Court to determine whether its administrative order should issue herein, directing the petitioner herein, G. J. Swan, Receiver of The Consumers Light, Heat and Power Company, to collect an increased rate from the consumers of gas in the cities of Topeka and Oakland to cover the added cost of such gas, if it shall be finally determined that the increase demanded by The Kansas Natural Gas Company in its notice of April 1, 1922, is a just and reasonable charge, and to determine whether, if such administrative order is issued, the funds derived from the increased rate to consumers authorized thereby shall be impounded as a trust fund to be paid to the

petitioner if said increased rate to The Kansas Natural Gas Company is determined to be a just and reasonable charge, or returned to consumers if said increased rate is finally by this Court determined and held to be an unjust and unreasonable charge, and until a just and remunerative permanent rate shall be established for consumers in the cities of Topeka and Oakland by The Public Utilities Commission of the State of Kansas on timely and proper application therefor.

4. That the defendant, The Kansas Natural Gas Company, its officers, attorneys and agents, are hereby restrained and enjoined from commencing, instituting or prosecuting in any other court or



tribunal any suit or proceedings to litigate any of the matters involved in this suit, or arising or growing out of the matters in the petition herein alleged, until the final determination of this suit.

5. The Clerk shall make and cause to be served upon the defendant, The Kansas Natural Gas Company, a duly certified copy of this order. John C. Pollock, Judge.

[File endorsement omitted.]

In United States District Court.

**Order Granting Permission to Public Utilities Commission of Kansas to File Intervening Petition.**

[Filed May 5, 1922.]

Upon motion of the State of Kansas, on the relation of A. E. Helm, Attorney for the Public Utilities Commission for the State of Kansas, said petitioner is hereby authorized and granted leave to file an intervening petition on its own behalf in this cause within five days from the date hereof. Dated 5th day of May, 1922. John C. Pollock, Judge.

[File endorsement omitted.]

14 In United States District Court.

**Petition of Intervention of the State of Kansas.**

[Filed May 6, 1922.]

Comes now the State of Kansas, on the relation of A. E. Helm, Attorney for the Public Utilities Commission for the State of Kansas, and by leave of court files its petition of intervention herein and alleges:

I.

That Clyde M. Reed, H. A. Russell and Jesse W. Greenleaf are the duly appointed, qualified and acting members of the Public Utilities Commission of the State of Kansas, and as such constitute the Public Utilities Commission of the State of Kansas.

II.

That A. E. Helm is the duly appointed, qualified and acting attorney for the Public Utilities Commission of the State of Kansas.

III.

That on the 25th day of April, 1922, and prior to the filing of this petition, the said Public Utilities Commission of the State

of Kansas entered an order directing that said A. E. Helm begin and prosecute an action in the Supreme Court of the State of Kansas against the above named defendant, for the purpose of procuring an order from said court directing the said defendant to reinstate and maintain in the future the rate of 35 cents per thousand cubic feet of natural gas furnished by the defendant to the distributing companies at the city gates of the cities obtaining their supply of natural gas from pipe lines of the defendant in the State of Kansas, until the defendant has obtained the consent of the Public Utilities Commission for the State of Kansas to change said rate.

## IV.

That the said Kansas Natural Gas Company is a corporation duly organized and existing under the laws of the State of Delaware, and authorized to do business in the State of Kansas under the laws of the State of Kansas.

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## V.

That the Atchison Railway Light & Power Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the City of Atchison, Kansas, and its inhabitants.

## VI.

That the American Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Altamont, Galena, Oswego, Columbus, Cherokee and Scammon, Kansas, and the inhabitants thereof.

## VII.

That the Baldwin Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the furnishing and distribution of natural gas to the City of Baldwin, Kansas, and its inhabitants.

## VIII.

That the Coffeyville Gas & Fuel Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Coffeyville and Liberty, Kansas, and the inhabitants thereof.

## IX.

That the Anderson County Light & Heat Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Colony, and Welda, Kansas, and the inhabitants thereof.

## X.

That the Tri-City Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Cherryvale, Kansas, and its inhabitants.

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## XI.

That the Edgerton Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Edgerton, Kansas, and its inhabitants.

## XII.

That the Gardner Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Gardner, Kansas, and its inhabitants.

## XIII.

That the Kansas Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Independence, Kansas, and its inhabitants.

## XIV.

That the Wyandotte County Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Kansas City, Kansas, and Rosedale, Kansas, and the inhabitants thereof.

## XV.

That the Citizens Light, Heat and Power Company is a corporation duly organized and authorized to do business in the State of

Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Lawrence, Kansas, and its inhabitants.

## XVI.

That the Leavenworth Light, Heat and Power Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city  
17 of Leavenworth, Kansas, and its inhabitants.

## XVII.

That the Johnson County Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Lenexa, Merriam and Shawnee, Kansas, and the inhabitants thereof.

## XVIII.

That the Ottawa Gas and Electric Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Ottawa, Kansas, and its inhabitants.

## XIX.

That the Olathe Gas and Distributing Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the furnishing and distribution of natural gas to the city of Olathe, Kansas, and its inhabitants.

## XX.

That the Parsons Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Parsons and Dennis, Kansas, and the inhabitants thereof.

## XXI.

That the Kansas Gas and Electric Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Pittsburg, Kansas, and its inhabitants.

## XXII.

That the Richmond and Princeton Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the  
18 business of furnishing and distributing natural gas to the cities of Richmond, Princeton and Scipio, Kansas, and the inhabitants thereof.

## XXIII.

That the Kansas Farmers Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas in the city or town of South Park, Kansas, and to its inhabitants, and in the vicinity thereof.

## XXIV.

That G. J. Swan, Receiver of the Consumers Light, Heat and Power Company of Topeka, Kansas, a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, is engaged in the business of furnishing and distributing natural gas to the cities of Topeka and Oakland, Kansas, and the inhabitants thereof.

## XXV.

That the Tonganoxie Oil and Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Tonganoxie and Reno, Kansas, and the inhabitants thereof.

## XXVI.

That the Baltic Operating Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Thayer, Kansas, and its inhabitants.

## XXVII.

That the Weir Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Weir City, Kansas, and its inhabitants.

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## XXVIII.

That the Wellsville Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Wellsville and Le Loup, Kansas, and the inhabitants thereof.

## XXIX.

That the Tyro Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Tyro, Kansas, and its inhabitants.

## XXX.

That the City of Chanute, Kansas, is a municipal corporation duly organized under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the said City of Chanute, Kansas, and its inhabitants.

## XXXI.

That the said defendant, the Kansas Natural Gas Company, is a public utility and is now and for more than one year last past has been engaged in the transportation and sale of natural gas to the above named distributing companies, furnishing and distributing natural gas to said cities and the inhabitants thereof in the State of Kansas.

## XXXII.

That prior to about April 25, 1922, the said defendant maintained and charged a rate of 35 cents per 1,000 cubic feet of natural gas at the city gates of said cities; that said rate of 35 cents per 1,000 cubic feet of natural gas was authorized by an order of the District Court of the United States for the District of Kansas, First Division, under date of January 20, 1920, and approved by an order of the Public Utilities Commission of the State of Kansas under date of August 18, 1920.

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## XXXIII.

That under date of April 1, 1922, the said defendant notified the above named distributing companies in writing that on and after the April, 1922, meter reading, said distributing companies would be charged at the rate of 40 cents per thousand cubic feet for all gas delivered to them at the town border measuring station.

That the following letter, addressed to the Consumers Light, Heat and Power Company, is a copy of an identical notice which was sent by the defendant to each of said distributing companies:

"Kansas Natural Gas Company.

Bartlesville, Oklahoma, April 1, 1922.

Consumers Light, Heat & Power Co., Topeka, Kansas.

GENTLEMEN: You are hereby notified that on and after April 1, 1922, meter reading you will be charged at the rate of forty cents per thousand cubic feet for all gas delivered to you at the town border measuring station, gas to be computed on a temperature basis of sixty degrees Fahrenheit, and a pressure basis of eight ounces atmospheric pressure, atmospheric pressure being assumed to be 14.41 pounds per square inch. Very truly yours, Kansas Natural Gas Co. By H. L. Montgomery."

That the April, 1922, meter reading date is April 25, 1922.

XXXIV.

That said defendant is at the time of the filing of this petition charging a rate of 40 cents per thousand cubic feet of natural gas furnished at the city gates of the cities of Kansas served with natural gas by the distributing companies hereinbefore named.

XXXV.

That no application was made, presented to or filed with the Public Utilities Commission of the State of Kansas by the said defendant, the Kansas Natural Gas Company, for permission to change its rate of 35 cents per thousand cubic feet of gas at the city gates of said cities to said rate of 40 cents per thousand cubic feet of natural gas so furnished.

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XXXVI.

That the Public Utilities Commission of the State of Kansas has not in any way or manner consented to, permitted or ordered the change in said rate of 35 cents per thousand cubic feet of gas, or to collect the rate of 40 cents per thousand cubic feet of natural gas so furnished to said cities.

XXXVII.

That the said defendant, the Kansas Natural Gas Company, has wrongfully and unlawfully changed the rate lawfully in effect for natural gas at the city gates of said cities without the consent of the Public Utilities Commission for the State of Kansas, and will continue to charge and collect from said distributing companies the increased rate of 40 cents per thousand cubic feet for natural gas at the city gates of said cities, unless said defendant shall be required by an order of this Honorable Court to reestablish and maintain the lawful rate of 35 cents per thousand cubic feet of natural gas at the city gates of said cities.



## XXXVIII.

That said plaintiff and the distributing companies furnishing and distributing natural gas to the cities of Kansas and the inhabitants thereof referred to herein, have no adequate remedy in the ordinary and usual course of the law to compel the defendant, the Kansas Natural Gas Company, to reestablish the lawful rate of 35 cents per thousand cubic feet of natural gas at the city gates of said cities, and to maintain the same until consent is obtained by said defendant from the Public Utilities Commission of the State of Kansas to change said rate of 35 cents per thousand cubic feet of natural gas.

## XXXIX.

That on April 25, 1922, the intervening petitioner herein file- a petition in the Supreme Court of the State of Kansas, praying for an alternative writ of mandamus directed to the defendant, the Kansas Natural Gas Company, commanding said defendant to proceed forthwith to reestablish and maintain the rate of 35 cents per thousand cubic feet of natural gas furnished to the distributing companies named herein at the city gates of said cities until consent to  
22 change the said rate has been obtained from the Public Utilities Commission for the State of Kansas, or show cause to this Court on or before the — day of April, 1922, why it does not do so.

That on the said 25th day of April, 1922, the Supreme Court of the State of Kansas, by Wm. A. Johnston, Chief Justice of said Court, issued an alternative writ of mandamus as prayed for in said petition, returnable on the 1st day of May, 1922.

That on the same day, April 25, 1922, the Chief Justice of the Supreme Court of the State of Kansas issued an order in said case commanding the defendant, the Kansas Natural Gas Company, to continue to furnish natural gas to said distributing companies at the city gates at the rate of 35 cents per thousand cubic feet, and not to discontinue the furnishing of natural gas to said distributing companies pending the final determination of the issues involved in the above entitled case.

Copies of said alternative writ and order are attached hereto, marked Exhibits "A" and "B" respectively and made a part hereof, the same as if set out herein in full.

Wherefore, your intervener prays:

1. That subpœna issue out of this Honorable Court, directed to The Kansas Natural Gas Company as defendant herein, requiring and commanding it to appear in this cause on a day certain and answer the several allegations of this intervening petition.

2. That a temporary restraining order be issued herein, restraining and enjoining the defendant, The Kansas Natural Gas Company, from collecting or attempting to collect, from the gas distributing companies named in this petition the rate named in its notice dated April 1, 1922, until it shall have procured the consent of the Public Utilities Commission for the State of Kansas to charge said in-



creased rate, and that at the final hearing of this case the temporary injunction prayed for herein shall be made perpetual. A. E. Helm, Attorney for the Public Utilities Commission for the State of Kansas.

23 STATE OF KANSAS,  
*Shawnee County, ss:*

A. E. Helm, of lawful age, being duly sworn on oath, says that he is the duly appointed, qualified and acting attorney for the Public Utilities Commission for the State of Kansas, and that he has read the foregoing petition and knows the contents thereof and that the matters therein stated are true. A. E. Helm.

Subscribed and sworn to before me this 3d day of May, 1922. Cora M. Johnson, Notary Public. [Seal.] My commission expires Nov. 23, 1925.

**Exhibit "A" to Intervening Petition.**

Copy.

In the Supreme Court of the State of Kansas.

No. 24307.

THE STATE OF KANSAS on the Relation of A. E. HELM, Attorney for the Public Utilities Commission of the State of Kansas, Plaintiff,

vs.

THE KANSAS NATURAL GAS COMPANY, Defendant.

*Alternative Writ of Mandamus.*

Whereas, There has been filed in this court a petition and motion for alternative writ of mandamus in words and figures as follows, to-wit:

24 In the Supreme Court of the State of Kansas.

No. 24307.

THE STATE OF KANSAS on the Relation of A. E. HELM, Attorney for the Public Utilities Commission of the State of Kansas, Plaintiff,

vs.

THE KANSAS NATURAL GAS COMPANY, Defendant.

**Petition and Motion for Alternative Writ of Mandamus.**

Now comes said plaintiff and for cause of action against said defendant alleges:

## Petition of Intervention

## I.

That Clyde M. Reed, H. A. Russell and Jesse W. Greenleaf are the duly appointed, qualified and acting members of the Public Utilities Commission of the State of Kansas, and as such constitute the Public Utilities Commission of the State of Kansas.

## II.

That A. E. Helm is the duly appointed, qualified and acting attorney for the Public Utilities Commission of the State of Kansas.

## III.

That on the 25th day of April, 1922, and prior to the filing of this petition, the said Public Utilities Commission of the State of Kansas entered an order directing that said A. E. Helm begin and prosecute an action in the Supreme Court of the State of Kansas against the above named defendant, for the purpose of procuring an order from said court directing the said defendant to reinstate and maintain in the future the rate of 35 cents per thousand cubic feet of natural gas furnished by the defendant to the distributing companies at the city gates of the cities obtaining their supply of natural gas from pipe lines of the defendant in the State of Kansas, until the defendant has obtained the consent of the Public Utilities Commission for the State of Kansas to change said rate.

## IV.

That the said Kansas Natural Gas Company is a corporation duly organized and existing under the laws of the State of Delaware, and authorized to do business in the State of Kansas under the laws of the State of Kansas.

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## V.

That the Atchison Railway Light & Power Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the City of Atchison, Kansas and its inhabitants.

## VI.

That the American Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Altamont, Galena, Oswego, Columbus, Cherokee and Scammon, Kansas, and the inhabitants thereof.

VII.

That the Baldwin Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the furnishing and distribution of natural gas to the City of Baldwin, Kansas and its inhabitants.

VIII.

That the Coffeyville Gas & Fuel Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Coffeyville and Liberty, Kansas, and the inhabitants thereof.

IX.

That the Anderson County Light & Heat Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Colony, and Welda, Kansas, and the inhabitants thereof.

X.

That the Tri-City Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Cherryvale, Kansas, and its inhabitants.

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XI.

That the Edgerton Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Edgerton, Kansas, and its inhabitants.

XII.

That the Gardner Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Gardner, Kansas, and its inhabitants.

XIII.

That the Kansas Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Independence, Kansas, and its inhabitants.

## XIV.

That the Wyandotte County Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Kansas City, Kansas, and Rosedale, Kansas, and the inhabitants thereof.

## XV.

That the Citizens Light, Heat and Power Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Lawrence, Kansas and its inhabitants.

## XVI.

That the Leavenworth Light, Heat and Power Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Leavenworth, Kansas and its inhabitants.

## 27

## XVII.

That the Johnson County Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Lenexa, Miriam and Shawnee, Kansas, and the inhabitants thereof.

## XVIII.

That the Ottawa Gas and Electric Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Ottawa, Kansas, and its inhabitants.

## XIX.

That the Olathe Gas and Distributing Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the furnishing and distribution of natural gas to the city of Olathe, Kansas, and its inhabitants.

## XX.

That the Parsons Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws

of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Parsons and Dennis, Kansas, and the inhabitants thereof.

## XXI.

That the Kansas Gas and Electric Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Pittsburg, Kansas, and its inhabitants.

## XXII.

That the Richmond and Princeton Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Richmond, Princeton and Scipio, Kansas, and the inhabitants thereof.

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## XXIII.

That the Kansas Farmers Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas in the city or town of South Park, Kansas, and to its inhabitants, and in the vicinity thereof.

## XXIV.

That G. J. Swan, Receiver of the Consumers Light, Heat and Power Company of Topeka, Kansas, a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, is engaged in the business of furnishing and distributing natural gas to the cities of Topeka and Oakland, Kansas, and the inhabitants thereof.

## XXV.

That the Tonganoxie Oil and Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Tonganoxie and Reno, Kansas, and the inhabitants thereof.

## XXVI.

That the Baltic Operating Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Thayer, Kansas and its inhabitants.

## XXVII.

That the Weir Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Weir City, Kansas and its inhabitants.

## XXVIII.

That the Wellsville Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the cities of Wellsville and  
29 Le Loup, Kansas, and the inhabitants thereof.

## XXIX.

That the Tyro Gas Company is a corporation duly organized and authorized to do business in the State of Kansas under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the city of Tyro, Kansas and its inhabitants.

## XXX.

That the City of Chanute, Kansas, is a municipal corporation duly organized under the laws of the State of Kansas, and is engaged in the business of furnishing and distributing natural gas to the said City of Chanute, Kansas and its inhabitants.

## XXXI.

That the said defendant, the Kansas Natural Gas Company, is a public utility and is now and for more than one year last past has been engaged in the transportation and sale of natural gas to the above named distributing companies, furnishing and distributing natural gas to said cities and the inhabitants thereof in the State of Kansas.

## XXXII.

That prior to about April 25, 1912, the said defendant maintained and charged a rate of 35 cents per 1,000 cubic feet of natural gas at the city gates of said cities; that said rate of 35 cents per 1,000 cubic feet of natural gas was authorized by an order of the District Court of the United States for the District of Kansas, First Division, under date of January 20, 1920, and approved by an order of the Public Utilities Commission of the State of Kansas under date of August 18, 1920.

## XXXIII.

That under date of April 1, 1922, the said defendant notified the above named distributing companies in writing that on and after the April 1922, meter reading, said distributing companies would be charged at the rate of 40 cents per thousand cubic feet for all gas delivered to them at the town border measuring station.

That the following letter, addressed to the Consumers Light, Heat and Power Company, is a copy of an identical notice which  
30 was sent by the defendant to each of said distributing companies:

"Kansas Natural Gas Company.

Bartlesville, Oklahoma, April 1, 1922.

Consumers Light, Heat & Power Co., Topeka, Kansas.

GENTLEMEN: You are hereby notified that on and after April 1, 1922, meter reading you will be charged at the rate of forty cents per thousand cubic feet for all gas delivered to you at the town border measuring station, gas to be computed on a temperature basis of sixty degrees Fahrenheit, and a pressure basis of eight ounces, atmospheric pressure, atmospheric pressure being assumed to be 14.41 pounds per square inch. Very truly yours, Kansas Natural Gas Co. By H. L. Montgomery."

That the April, 1922, meter reading date is April 25, 1922.

## XXXIV.

That said defendant is at the time of the filing of this petition charging a rate of 40 cents per thousand cubic feet of natural gas furnished at the city gates of the cities of Kansas served with natural gas by the distributing companies hereinbefore named.

## XXXV.

That no application was made, presented to or filed with the Public Utilities Commission of the State of Kansas by the said defendant, the Kansas Natural Gas Company, for permission to change its rate of 35 cents per thousand cubic feet of gas at the city gates of said cities to said rate of 40 cents per thousand cubic feet of natural gas so furnished.

## XXXVI.

That the Public Utilities Commission of the State of Kansas has not in any way or manner consented to, permitted or ordered the change in said rate of 35 cents per thousand cubic feet of gas, or to collect the rate of 40 cents per thousand cubic feet of natural gas so furnished to said cities.



## XXXVII.

That the said defendant, the Kansas Natural Gas Company, has wrongfully and unlawfully changed the rate lawfully in effect for natural gas at the city gates of said cities without the consent  
31 of the Public Utilities Commission for the State of Kansas, and will continue to charge and collect from said distributing companies the increased rate of 40 cents per thousand cubic feet for natural gas at the city gates of said cities, unless said defendant shall be required by an order of this Honorable Court to reestablish and maintain the lawful rate of 35 cents per thousand cubic feet of natural gas at the city gates of said cities.

## XXXVIII.

That said plaintiff and the distributing companies furnishing and distributing natural gas to the cities of Kansas and the inhabitants thereof referred to herein, have no adequate remedy in the ordinary and usual course of the law to compel the defendant, the Kansas Natural Gas Company, to reestablish the lawful rate of 35 cents per thousand cubic feet of natural gas at the city gates of said cities, and to maintain the same until consent is obtained by said defendant from the Public Utilities Commission of the State of Kansas to change said rate of 35 cents per thousand cubic feet of natural gas.

Wherefore, plaintiff moves the Court and prays for an alternative writ of mandamus directed to the defendant, the Kansas Natural Gas Company, commanding said defendant to proceed forthwith to reestablish and maintain the rate of 35 cents per thousand cubic feet of natural gas furnished to said distributing companies at the city gates of said cities, until consent to change the said rate has been obtained from the Public Utilities Commission of the State of Kansas, or to show cause to this Court on or before the — day of April, 1922, why it does not do so. A. E. Helm, Attorney for the Public Utilities Commission of the State of Kansas.

STATE OF KANSAS,  
*Shawnee County, ss:*

A. E. Helm, of lawful age, being duly sworn on oath, says that he is the duly appointed, qualified and acting attorney for the Public Utilities Commission for the State of Kansas, and that he has read the foregoing petition and knows the contents thereof and that the matters therein stated are true. A. E. Helm.

32       Subscribed and sworn to before me this 25th day of April, 1922. Cora M. Johnson, Notary Public. My commission expires Nov. 23, 1925.

And it being agreeable to me that justice be speedily done in the premises, and that all lawful relief be speedily granted to the plaintiffs in this petition:



Now, Therefore, you, The Kansas Natural Gas Company, are hereby commanded to proceed forthwith to reinstate and reestablish the rate of Thirty-five Cents (35¢) per thousand cubic feet at the city gates for natural gas furnished by you to the distributing companies named in said petition, and to maintain said rate in effect until the consent of the Public Utilities Commission for the State of Kansas shall have been obtained to change the same, or that you show cause to this court on or before the 1st day of May, 1922, why you should not do so, and then and there return this writ. Wm. A. Johnston, Chief Justice.

**"Exhibit B" to Intervening Petition.**

Copy.

In the Supreme Court of the State of Kansas.

No. 24307.

THE STATE OF KANSAS on the Relation of A. E. HELM, Attorney for the Public Utilities Commission of the State of Kansas, Plaintiff,

vs.

THE KANSAS NATURAL GAS COMPANY, Defendant.

*Incidental Order.*

Whereas it has been made to appear to the court that the defendant, the Kansas Natural Gas Company, intends to and will discontinue the furnishing of natural gas to the distributing companies named in the petition filed in the above entitled case unless said distributing companies immediately enter into an agreement  
33 with the Kansas Natural Gas Company to pay the increased rate of 40 cents per thousand cubic feet of natural gas at the city gates:

It is therefore by the court ordered; that the Kansas Natural Gas Company be, and it is hereby, commanded to continue to furnish natural gas to said distributing companies at the city gates at the rate of 35 cents per thousand cubic feet, and not to discontinue the furnishing of natural gas to said distributing companies, pending the final determination of the issues involved in the above entitled case. Wm. A. Johnston, Chief Justice.

Service of the above entitled order is hereby acknowledged for the Kansas Natural Gas Company. By Robert Garver, Attorney for Defendant.

[File endorsement omitted.]

**Answer of Defendant, Kansas Natural Gas Company, to  
Intervening Petition.**

[Filed May 26, 1922.]

Comes now the Kansas Natural Gas Company and for its Answer to the intervening petition of the Public Utilities Commission of the State of Kansas, says:

I.

It admits all of the allegations of fact contained in paragraphs I to XXX, inclusive, of plaintiff's petition.

II.

It admits the facts alleged in paragraph XXXI of Plaintiff's petition except the allegation that it is a public utility within the meaning of the Statutes of Kansas conferring jurisdiction over public utilities upon the Public Utilities Commission, of said State.

III.

It admits the allegations of fact contained in paragraph XXXII of Plaintiff's petition, except that in the cities named in paragraphs VI, VIII, X, XIII, a rate other than thirty-five (\$0.35) cents was in effect, established as alleged by plaintiff.

IV.

It admits the allegations of fact contained in paragraph XXXIII of plaintiff's petition, except that no notice was sent to companies serving the cities of Coffeyville, Cherryvale, Independence, Ottawa, Olathe Tyro, or Chanute, and no attempt was made to change the existing rates in said cities.

V.

It admits the allegations of fact contained in paragraph XXXIV of Plaintiff's petition, with the exceptions stated in number three of this answer.

VI.

It admits the allegations of fact contained in paragraph XXXV of Plaintiff's petition.

VII.

It admits the allegations of fact contained in paragraph XXXVI of plaintiff's petition.

## VIII.

35 It denies that it has wrongfully or unlawfully changed the rate formerly charged by it for gas at the city gates of said cities, but admits that it has announced an increased rate without the consent of the Public Utilities Commission, and that it will continue to charge and collect from said distributing companies the increased rate of forty (\$0.40) cents per thousand cubic feet for natural gas at the city gates of said cities unless prevented from doing so by this Honorable Court.

## IX.

Answering the amendment to Plaintiff's Intervening Petition as the same appears by stipulation filed herein, this Defendant admits that none of the Distributing Companies on its system have entered into any contracts with it and admits that none has agreed nor consented to pay its said sum of forty cents (\$0.40) per thousand cubic feet and admits that some of said companies have refused to so agree or to pay said sum of forty cents (\$0.40) per thousand cubic feet until authorized so to do by the Public Utilities Commission of the State of Kansas.

## X.

For further answer to said intervening petition and for cause why it has not performed the things therein referred to, said Kansas Natural Gas Company respectfully represents that it is engaged in the business of buying, transporting and selling natural gas in commerce among the States of Oklahoma, Kansas and Missouri; that it maintains a pipe line running from the State of Oklahoma, across the State of Kansas, and into the State of Missouri; that for the year ending December 31st, 1921, it transported through said pipe line 11,013,408,000 cubic feet of natural gas, 7,216,718,000 cubic feet of which was produced in the State of Oklahoma, and entered said pipe line in said State, the remainder thereof being produced in the State of Kansas and entering said pipe line in that State; that of the total amount of gas so transported, 5,164,121,000 cubic feet or forty-eight (48%) per cent was delivered in the State of Kansas, and 5,558,959,000 cubic feet, or fifty two (52%) per cent was delivered in the State of Missouri; that said gas obtained in Oklahoma and in Kansas is intermingled in said pipe line and flows in a common stream from the State of Oklahoma into the State of Kansas and through the State of Kansas into the State of Missouri; that said Kansas Natural Gas Company does not have a franchise from any city or town in the State of Kansas and does not operate any distributing companies, but sells gas to distributing companies at the respective city gates for an agreed price; that the figures above given for the year ending December 31st, 1921, represent an average year, in so far as showing the relative proportion of gas delivered in Kansas and Missouri, but do not correctly represent the average relative re-

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ceipts of gas from Oklahoma and Kansas for the reason that during said year 1,300,000,000 cubic feet of the gas shown to have been produced in the State of Kansas, was received from the Colony Field in Anderson County, Kansas, which field, at its present rate of decline will have practically no gas available for the use of said pipe line in supplying the demand for the winter of 1922, at which time practically all of the gas supplied to Kansas and Missouri, as shown by the 1921 figures above given, will have to be purchased in, and transported from, the State of Oklahoma.

## XI.

Said Kansas Natural Gas Company further alleges that its business, as above set out, constitutes commerce among the States of a national character, which is not subject to regulation by the Public Utilities Commission of the State of Kansas, and that it has the legal right to charge the several distributing companies set out in plaintiff's petition such reasonable and just rates for gas delivered to them as it may desire without the consent of the Public Utilities Commission of Kansas and without making application to said Commission for authority so to do.

## XII.

Said Kansas Natural Gas Company further alleges that the rate of  
37      forty (\$0.40) cents per thousand cubic feet for gas delivered to the city gates of the several distributing companies set out in plaintiff's petition is a just and reasonable rate and is necessary to be charged by said Kansas Natural Gas Company in order to secure to it a reasonable return on the value of its property used and useful in connection with the service rendered, and that a less rate would be unremunerative, non-compensatory, and confiscatory.

Wherefore, having fully answered, defendant prays that the relief sought by plaintiff herein be denied and that the several orders issued against defendant herein be set aside and for such other and further relief as to this Honorable Court may seem just and equitable. The Kansas Natural Gas Company, By H. O. Caster, Robt. D. Garver, R. J. Higgins, and Fred Robertson, Attorneys.

[File endorsement omitted.]

In United States District Court.

**Stipulation for Amendment to Intervening Petition of Public Utilities Commission.**

[Filed May 19, 1922.]

It is hereby stipulated by and between the parties to the above entitled cause that the intervener, the State of Kansas, ex rel. A. E. Helm, Attorney for the Public Utilities Commission for the State of

Kansas, may amend its intervening petition filed herein by adding at the end of Paragraph 34 the following:

Plaintiff further alleges on information and belief that said distributing companies have not entered into any contracts with said Kansas Natural Gas Company, and have not consented nor agreed to pay said Kansas Natural Gas Company said forty cents (40¢) per thousand cubic feet for said natural gas so furnished at city gates of said cities; and that said companies refuse to agree so to do and refuse to pay said forty cents (40¢) per thousand cubic feet for said gas until authorized so to do by the Public Utilities Commission for the State of Kansas.

It is further stipulated that said amendment may be considered by the Court the same as though it has been made a part of said paragraph in the original petition of intervention, and further that the answers of the defendant and the Receiver of the Consumers Light, Heat and Power Company to said intervening petition may be treated as answers to said petition as amended.

It is further stipulated that the filing of said amendment shall in no manner affect the time of the hearing of the case as the same is now set for hearing by the Court. Dated May 10, 1922. A. E. Helm, Attorney — Public Utilities Commission for the State of Kansas. H. O. Caster, Robt. D. Garver, Attorneys for Kansas Natural Gas Co. Thomas F. Doran, Attorney for G. J. Swan, Receiver for the Consumers Light, Heat and Power Company.

[File endorsement omitted.]

In United States District Court.

**Answer of G. J. Swan, Receiver, to Amended Intervening Petition.**

[Filed May 26, 1922.]

Comes, now, the above named G. J. Swan, Receiver of the Consumers Light, Heat and Power Company, and for his answer to the amended intervening petition of the State of Kansas filed herein by A. E. Helm, attorney for the Public Utilities Commission of the State of Kansas, admits all the allegations thereof consistent with the petition of G. J. Swan, Receiver, filed herein; and denies each and every, all and singular the material allegations of said intervening petition inconsistent therewith.

And this answering plaintiff further specifically alleges that while it is true, after the holding of the Public Utilities Commission of the State of Kansas, denying the right of the Kansas Natural Gas Company to increase its rates to the distributing companies without the consent of the Public Utilities Commission of Kansas, he notified the Kansas Natural Gas Company that he would not pay the increased rate of forty cents at the City Gates established by notice of the Kansas Natural Gas Company of April 1, 1922. Said notice of this answering plaintiff to the Kansas Natural Gas Com-

pany that he would not pay the increased rate was a mere assertion to question the right of the Kansas Natural Gas Company to make the increase demanded, and that it is the opinion of this answering plaintiff that there is no legal reason which will sustain his refusal to pay said added rate if the same shall by this court be determined to be reasonable, just and necessary; that the said rate is being charged against this answering plaintiff and that he will have to pay the same unless this court acting in equity permanently enjoins the collection thereof.

Wherefore, plaintiff prays judgment herein in accordance with the prayer of his original petition filed herein on the 19th day of April, 1922. Thomas F. Doran, Attorney for G. J. Swan, Receiver Consumers Heat, Light & Power Co.

[File endorsement omitted.]

In United States District Court.

**Answer of Kansas Natural Gas Company to Petition of  
G. J. Swan, Receiver.**

[Filed May 1, 1922.]

Comes now the Kansas Natural Gas Company, a corporation organized under the Laws of the State of Delaware, and duly authorized to transact business in the State of Kansas and for answer to the petition of G. J. Swan, Receiver of the Consumers Light, Heat & Power Company, filed herein April 19, 1922, says:

I.

It admits the allegations of fact contained in paragraphs 1 to 8, inclusive, of said petition.

II.

It denies that the rate of forty (\$0.40) cents per thousand cubic feet of gas delivered to the receiver of said Consumers Light, Heat and Power Company at the city gate of the City of Topeka is excessive or unreasonable, but on the contrary alleges the fact to be that said rate is just and reasonable and is necessary to be charged by said Kansas Natural Gas Company in order to secure to it a reasonable return on the value of its property used and useful in connection with the service rendered and that a less rate would be unremunerative, non-compensatory, and confiscatory.

III.

Further answering, said Kansas Natural Gas Company says: that it is engaged in the business of buying, transporting and selling natural gas in commerce among the States of Oklahoma, Kansas and Missouri; that it maintains a pipe line running from the State

of Oklahoma, across the State of Kansas, and into the State of Missouri; that for the year ending December 31st, 1921, it transported through said pipe line 11,013,408,000 cubic feet of natural gas, 7,216,718,000 cubic feet of which was produced in the State of Oklahoma and entered said pipe line in said State, the remainder thereof being produced in the State of Kansas and entering said pipe line in that State; that of the total amount of gas so transported, 5,164,121,000 cubic feet or forty eight (48%) per cent was delivered in the State of Kansas and 5,558,959,000 cubic feet, or fifty two (52%) per cent was delivered in the State of Missouri; that said gas obtained in Oklahoma and in Kansas is intermingled in said pipe line and flows in a common stream from the State of Oklahoma into the State of Kansas and through the State of Kansas into the State of Missouri; that said Kansas Natural Gas Company does not have a franchise from any city or town in the State of Kansas and does not operate any distributing companies, but sells gas to distributing companies at the respective city gates for an agreed price; that the figures above given for the year ending December 31st, 1921, represent an average year, in so far as showing the relative proportion of gas delivered in Kansas and Missouri, but do not correctly represent the average relative receipts of gas from Oklahoma and Kansas for the reason that during said year 1,300,000,000 cubic feet of the gas shown to have been produced in the State of Kansas was received from the Colony Field in Anderson County, Kansas, which

41 field, at its present rate of decline, will have practically no gas available for the use of said pipe line in supplying the demand for the winter of 1922, at which time practically all of the gas supplied to Kansas and Missouri, as shown by the 1921 figures above given, will have to be purchased in, and transported from, the State of Oklahoma.

#### IV.

Said Kansas Natural Gas Company further alleges that its business, as above set out, constitutes commerce among the States of a national character which is not subject to regulation by the Public Utilities Commission of the State of Kansas, and that it has the legal right to charge the receiver herein and its other customers such reasonable and just rates for gas delivered as it may desire without the consent of the Public Utilities Commission of Kansas and without making application to said Commission for authority to do so.

Wherefore, said Kansas Natural Gas Company prays this Honorable Court that the rate of forty (\$0.40) cents per thousand cubic feet of gas delivered at the city gate of said Consumers Light, Heat and Power Company, to be measured as provided in said notice of April 1st, 1922, be decreed to be just and reasonable, and a valid and legal charge against said Receiver, and that said Receiver be directed to make payment accordingly for gas delivered to him from and after April 25th, 1922, and for such other and further relief in the premises as to this Honorable Court may seem just and equitable. H. O. Caster, Robt. D. Garver, Attorneys for Kansas Natural Gas Company.

[File endorsement omitted.]



**Reply of G. J. Swan, Receiver, to Answer.**

[Filed May 3, 1922.]

Comes now G. J. Swan, Receiver of The Consumers Light, Heat and Power Company, complainant in petition filed herein on April 19, 1922, and for his reply to the answer of The Kansas Natural Gas Company, denies each and every, all and singular the allegations of said answer which are inconsistent with the allegations of petition filed by G. J. Swan, Receiver, on April 19, 1922.

Wherefore, Plaintiff prays for the relief asked in his said petition filed April 19, 1922. Thomas F. Doran, Attorney for G. J. Swan, Receiver.

[File endorsement omitted.]

In United States District Court.

**Order of Submission.**

[Filed May 26, 1922.]

Now, on this 26th day of May A. D. 1922, the above entitled cause came regularly on to be heard by the court on the single question of law presented by the pleadings, namely, whether or not the Kansas Utilities Commission has jurisdiction of, and control over the rates which shall be charged by the Kansas Natural Gas Company and exacted by it from the Receiver of the Consumers Light, Heat and Power Company;

It is ordered, on agreement of counsel made in open court, this cause may be submitted, and the same may be taken under advisement by the court for determination of said question of law at as early a date as the same may be reached by the court. And this cause is submitted to the Court for determination on this question alone. John C. Pollock, U. S. District Judge.

[File endorsement omitted.]

**Memorandum Opinion, Pollock, J.**

[Filed June 16, 1922.]

The single question now presented to the Court for decision in this suit is this, namely: Is the business done by The Kansas Natural Gas Company, (hereinafter called the "Natural Company") a Delaware corporation, engaged in the business of producing and buying natural gas, mostly in the state of Oklahoma, also in this state, and



transporting the same through pipe lines in this state and through this state into the state of Missouri and delivering the same to distributing companies to be delivered by said companies to their customers, in its nature such business as is under the control and subject to the regulation of the Public Utilities Commission of the State of Kansas in the matter of rates or price per thousand cubic feet which may be charged by the Natural Company for the gas so transported, sold and furnished the distributing companies at the intake of said distributing companies' lines at the gates of the cities?

This question arises and is now presented for determination in the following manner.

One G. J. Swan is the Receiver, duly appointed, in the above entitled and numbered suit in this court, over the property and assets of defendant, the Consumers Light, Heat & Power Company, a corporation, created for the purpose of furnishing light, heat and power to the city of Topeka and its inhabitants in this State and the adjoining town of Oakland. Said Receiver was through the gas system of defendant Light Heat and Power Company engaged in the business of so furnishing gas at the time this litigation arose. The only

44 source of supply of natural gas which said Receiver has or can procure is from the Natural Company. The rate fixed and price charged by the Natural Company prior to the first day of April this present year for gas furnished and delivered to said Receiver at the city gate was the sum of thirty five cents per thousand cubic feet. However, on April first said Receiver was by the Natural Company notified, as follows:

"Kansas Natural Gas Company.

Bartlesville, Oklahoma, April 1, 1922.

"Consumers Light, Heat & Power Co., Topeka, Kansas.

GENTLEMEN: You are hereby notified that on and after April, 1922, meter reading you will be charged at the rate of forty cents per thousand cubic feet for all gas delivered to you at the town border measuring station, gas to be computed on a temperature basis of sixty degrees Fahrenheit, and a pressure basis of eight ounces atmospheric pressure atmospheric pressure being assumed to be 14.41 pounds per square inch. Very truly yours, Kansas Natural Gas Co.,  
By H. L. Montgomery."

This same proposed increase in rates from thirty five to forty cents per thousand cubic feet was made as to all cities and town- of this State without presentation of the right to so do to the Public Utilities Commission of this State, or receiving any authority from that source. Thereupon, the Receiver of defendant Consumers Light, Heat and Power Company filed in this suit his complaint praying an injunction against the Natural Company restraining said company from charging the proposed rate of forty cents per thousand cubic feet on the ground said rate was confiscatory in view of the only rate

it is by the Public Utilities Commission allowed to charge its customers.

Thereupon, a restraining order was granted the Receiver and the Public Utilities Commission, through its solicitor, in the name of the State, intervened herein, praying an injunction against the Natural Company restraining it from charging or collecting from any distributing company located in this State said increase in price of gas from thirty five to forty cents a thousand cubic feet, on the

45 ground such proposed increase or charge for gas is unlawful and void because not authorized by the Public Utilities Commission of this State.

Thus is raised the issue of the power, jurisdiction and control of the Public Utilities Commission of this State over the business done by the Natural Company within this State.

Coming now to the consideration of this question, it may be said: The Natural Company owns and exercises no franchise rights in this State acquired from the State or any of its municipal bodies. It is a foreign corporation owning a pipe line system and is producing or purchasing natural gas in Oklahoma, this State, and transporting it from Oklahoma into and through this State into the State of Missouri, and delivering the same to some forty odd local gas companies holding franchises from the several cities in which they are located for the distribution and sale of natural gas therein. In the transaction of its business the Natural Company is engaged solely and alone in interstate commerce business within this State and does no local business whatever. This is conceded. The local companies to which the Natural Company sells its gas do a purely local business, hence, unquestionably are subject to the jurisdiction and control of the Public Utilities Commission of this State so far as located within this State. The question, however, is as to that business which is transacted by the Natural Company. This question, I find, has been presented to and received consideration from the Supreme Court in the case of Public Utilities Commission v. Landon, 249 U. S. 236, wherein Mr. Justice McReynolds, delivering the opinion for the court, said, in speaking of the business conducted by the Natural Company, as follows:

"The court below held the business carried on by the receivers—transportation of natural gas and its disposition and sale to consumers through the distributing companies—was interstate commerce of a national character; that the commissions' actions interfered with establishment and maintenance of reasonable sale rates and thereby burdened interstate commerce and took the receivers' property without due process of law; that the original supply contracts were not binding upon the receivers. And it accordingly enjoined the commissions, their members, the attorneys general of both States, the various municipalities and the distributing companies from interfering with establishment of such reasonable and compensatory rates as the court might approve.

\* \* \* \* \*

46 "That the transportation of gas through pipe lines from one State to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State. *American Express Co. v. Iowa*, 196 U. S. 133, 143; *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229; *Haskell v. Kansas Natural Gas Co.*, 224 U. S. 217.

\* \* \* \* \*

"Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods. *Rearick v. Pennsylvania*, 203 U. S. 507, 512; *The Pipe Line Cases*, 234 U. S. 548, 500. The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own account and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains."

The business then being conducted by the Receiver of the Natural Company differed from that now being conducted by the Natural Company in the fact that the gas transported by the Natural Company in that case was turned over to and distributed by the local gas companies under divisional orders of proceeds, whereas, in the present case the gas is sold outright and delivered to the distributing companies at the city gates. This fact more strongly disassociates the Natural Company from any local business whatever.

The case of *Penna. Gas Co. v. Pub. Service Comm.* 252 U. S. 23, is much relied upon by those insisting upon control of the business by the Public Utilities Commission. That was a case in which the Pennsylvania Company was engaged in both the interstate business of transporting natural gas from Pennsylvania into the State of New York for sale, and, also, under certain franchise rights granted to it by the City of Jamestown, New York, was distributing and delivering the gas to its customers at the burners tips in the city.

Mr. Justice Day, delivering the opinion of the court, and distinguishing that case from the *Landon* case, said:

"We think that the transmission and sale of natural gas produced in one State, transported by means of pipe lines and directly furnished to consumers in another State, is interstate commerce within the principles of the cases already determined by this court. *West v. Kansas Natural Gas Co.*, 221 U. S. 229; *Haskell v. Kansas Natural Gas Co.*, 224 U. S. 217; *Western Union Telegraph Co. v. Foster*, 247 U. S. 105.

47 "This case differs from *Public Utilities Commission v. Landon*, 249 U. S. 236, wherein we dealt with the piping of natural gas from one State to another, and its sale to independent local gas companies in the receiving State, and held that the retailing of gas by the local companies to their consumers was intrastate commerce and not a continuation of interstate commerce, although

the mains of the local companies receiving and distributing the gas to local consumers were connected permanently with those of the transmitting company. Under the circumstances set forth in that case we held that the interstate movement ended when the gas passed into the local mains; that the rates to be charged by the local companies had but an indirect effect upon interstate commerce and, therefore, the matter was subject to local regulation."

Now the contention of those here seeking to have the business of the Natural Company controlled by the Public Utilities Commission of the State under state laws, is this: As the Federal Government has not attempted to exercise that exclusive control over the interstate business of the Natural Company which the commerce clause of the Federal Constitution confers upon it, therefore the State, through its Public Utilities Commission may exercise that control so conferred on the Government under the commerce clause until the Federal Government takes over such control. However, it is quite well settled by authority although the business transacted be in its essential nature interstate, yet, so long as the General Government has not exercised its power conferred to regulate such commerce, the State may in incidental ways and manners impress restrictions upon interstate commerce. This is no place more aptly stated than by Mr. Justice Day in distinguishing the Landon case from the Pennsylvania Gas case then at bar, in which it is said as follows:

"The general principle is well established and often asserted in the decisions of this court that the State may not directly regulate or burden interstate commerce. That subject, so far as legislative regulation is concerned, has been committed by the Commission to the control of the Federal Congress. But while admitting this general principle, it, like others of a general nature, is subject to qualifications not inconsistent with the general rule, which now are as well established as the principle itself.

"In dealing with interstate commerce it is not in some instances regarded as an infringement upon the authority delegated to Congress, to permit the States to pass laws indirectly affecting such commerce, when needed to protect or regulate matters of local interest. Such laws are operative until Congress acts under its superior authority by regulating the subject matter for itself. In varying forms this subject has frequently been before this court. The previous cases were fully reviewed and deductions made therefrom in the Minnesota Rate Cases, 230 U. S. 352. The paramount authority of Congress over the regulation of interstate commerce was again asserted in those cases. It was nevertheless recognized that there existed in the States

a permissible exercise of authority, which they might use until Congress had taken possession of the field of regulation," &c.

48 However, the control which the Public Utilities Commission of the State here asserts over the business done by the Natural Company within this State is in no sense, manner or way incidental in its nature under the law creating the Commission, but is full, absolute and complete regulation and control over the interstate business of the Natural Company, precisely the same in its nature as it holds and exercises over the business of the local distributing companies, even

to the extent of establishing the prices to be charged for what it transports into the State in interstate commerce and here sells at wholesale prices.

It has been often declared no more complete control can be exercised over interstate business. See *Hayman v. Hays*, 236 U. S. 178; *The Pipe Line Cases*, 234 U. S. 548; *Brown v. Maryland*, 12 Wheaton 419; *American Express Co. v. Iowa*; *Minnesota v. Barber*, 136 U. S. 313; *Schollenberger v. Pennsylvania*, 171 U. S. 1, and many other cases.

From all of which, I am persuaded beyond doubt, so long as we have the guaranty of protection afforded and intended to be afforded by the framers of our National Constitution against the complete regulation and control of purely interstate commerce under the commerce clause of the Constitution, such regulation as is here sought by the State through its Public Utilities Commission over the purely interstate business of the Natural Company cannot and should not be permitted.

It follows, the power and control attempted to be exercised by the State through its Public Utilities Commission over the interstate business of the Natural Company must be denied, and is denied. John C. Pollock, Judge. Kansas City, Kansas, June 15th, 1922.

[File endorsement omitted.]

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In United States District Court.

**Decree.**

[Filed June 15, 1922.]

Now on this 15th day of June, A. D. 1922, the above entitled cause came regularly on for decision by the Court upon the sole question whether the Public Utilities Commission of the State of Kansas has power and authority to control and regulate the price which shall be fixed by the Kansas Natural Gas Company as a charge for gas sold and delivered to the Receiver of the complainant herein; this question of law being raised on the petition of G. J. Swan, Receiver, heretofore, on the 19th day of April, 1922, filed herein, and the answer of the Kansas Natural Gas Company thereto, by the intervening petition of the State of Kansas on the Relation of A. E. Helm, Attorney for the Public Utilities Commission for the State of Kansas; and the Court, having heretofore, on the 26th day of May, 1922, fully heard counsel for G. J. Swan, Receiver of the Consumers Light, Heat and Power Company, and counsel for the Kansas Natural Gas Company and counsel for the State of Kansas and the Public Utilities Commission of the State of Kansas, and having, on said date, under written order of submission, taken said question unded advisement, and having since said submission fully considered the facts and law as submitted, and being fully advised in the premises, finds:

That the power and control attempted to be exercised by the State

## Petition for Appeal.

of Kansas through its Public Utilities Commission over the interstate business of the Kansas Natural Gas Company by regulating and fixing the price which it shall charge the Receiver of the Plaintiff herein for gas delivered to him by the Kansas Natural Gas Company, should be, and must be, denied and,

That this Court has full power and jurisdiction to hear and determine the questions arising on the petition of G. J. Swan, Receiver of the Consumers Light, Heat and Power Company filed herein on the 19th day of April, 1922, and the answer of the Kansas Natural Gas Company thereto, on the merits, and that this Court should hear and determine said questions on the merits in the regular course at the convenience of the Court and the parties, and that jurisdiction of this cause should be retained for said purpose.

Wherefore, it is considered, ordered and decreed by the Court that the power and control attempted to be exercised by the State of Kansas through its Public Utilities Commission over the interstate business of the Kansas Natural Gas Company by regulating and fixing the price which it shall charge the Receiver of plaintiff herein for gas delivered to him by the Kansas Natural Gas Company should be, and the same, is hereby denied.

And that this Court has full power and jurisdiction to hear and determine the questions arising on the petition of G. J. Swan, Receiver of the Consumers Light, Heat and Power Company filed herein on the 19th day of April, 1922, and the answer of the Kansas Natural Gas Company thereto, on the merits, and that this Court should, and will, hear and determine said questions on the merits in the regular course at the convenience of the court and the parties, and that jurisdiction of this cause should be, and is, retained for this purpose. John C. Pollock, Judge.

[File endorsement omitted.]

In United States District Court.

## Petition for Appeal.

[Filed Sept. 15, 1922.]

To the Honorable John C. Pollock, Judge of said Court:

And now comes the State of Kansas on the relation of Fred S. Jackson, Attorney for said Public Utilities Commission, as the successor in office to A. E. Helm; and feeling itself aggrieved by the final decree of this court entered on the 5th day of June, 1922, hereby prays that an appeal may be allowed it from the said decree to the Supreme Court of the United States. In connection with this petition, petitioner herewith presents its assignment of errors. F. S. Jackson, Attorney for Intervening Defendant and Petitioner, the State of Kansas.

[File endorsement omitted.]



51

In United States District Court.

**Assignment of Errors.**

[Filed Sept. 15, 1922.]

Now comes the appellant, the State of Kansas, on the relation of Fred S. Jackson, attorney for the Public Utilities Commission of the State of Kansas, successor in office of A. E. Helm, by Fred S. Jackson, its Attorney, and in connection with its petition for appeal, says in the record, proceedings, and in the final decree aforesaid, manifest error has intervened to the prejudice of the appellant, to-wit:

1. The court erred in holding that the intervening petition and answer of this petitioner does not state facts sufficient to constitute a cause of action in favor of the petitioner, against the defendant and other parties to said action, and in denying this petitioner's prayer for relief in said suit, and in entering the decree and decision against this petitioner denying it relief.

2. The court erred in holding that the power, control, and regulation attempted to be exercised by the State of Kansas, thru its Public Utilities Commission, over the interstate business of the Kansas Natural Gas Company, defendant in said suit, by regulating and fixing the price which it shall charge the receiver of the plaintiff herein for gas delivered to him by the said Kansas Natural Gas Company, should and must be denied because the said Public Utilities Commission is and was without power, authority, and jurisdiction to exercise said regulatory control and power.

3. That the court erred in holding that the power and control attempted to be exercised by the state of Kansas, thru its Public Utilities Commission, over the interstate business of the Kansas Natural Gas Company, by regulating and fixing the price which it shall charge the receiver of plaintiff and complainant herein for gas delivered to him by the Kansas Natural Gas Company, should be and the same is hereby denied, and that such power and authority of the Public Utilities Commission of the State of Kansas, if exercised by it, would be an unlawful interference with interstate commerce, and a violation of the interstate commerce clause of the Constitution of the United States and for said reason denying the prayer and intervening petition of the state of Kansas, thru its Public Utilities Commission, for relief in this suit.

4. That the court erred in holding that the state of Kansas, thru its Public Utilities Commission, did not have full power, authority, jurisdiction, and regulatory control over the interstate business of the Kansas Natural Gas Company, and full power, authority, and jurisdiction to regulate and fix the price which the said Kansas Natural Gas Company should charge the receiver of plaintiff and complainant herein for gas delivered to him by the Kansas Natural Gas Company as a public utility and public service company engaged in said service of transporting and delivering gas to the receiver of the plaintiff and complainant herein.

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**Bond on Appeal.**

5. That the decree is against the manifest weight of evidence herein.

6. That the decree is contrary to law and the provisions of the Constitution of the United States.

Wherefore Appellant prays that the decree of the District Court for the District of Kansas may be reversed and remanded with direction to proceed in accordance with the law. F. S. Jackson, Attorney for Appellant and Petitioner.

[File endorsement omitted.]

In United States District Court.

**Bond on Appeal.**

[Filed Sept. 19, 1922.]

Know all men by these presents, that we, the State of Kansas, as principal, and Fidelity and Deposit Co. of Md. as sureties, of the county of Shawnee, state of Kansas, are held and firmly bound unto the United States in the sum of \$1,000, lawful money of the United States, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves and each of our heirs, executors and administrators, by these presents.

Sealed with our seals and dated this 19th day of September, 1922.

Whereas the above-named State of Kansas, has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the district court for the District of Kansas, First Division, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named State of Kansas shall prosecute its said appeal to effect and answer all costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect. The State of Kansas, By William A. Smith, Atty. for P. U. Co. Fidelity and Deposit Co. of Md., By J. Newell Abrahams, Attorney-in-Fact. [Seal.]

Approved this 19th day of Sept. 1922. John C. Pollock, Judge.

[File endorsement omitted.]

In United States District Court.

**Order Allowing Appeal.**

[Filed Sept. 19, 1922.]

On motion of F. S. Jackson, solicitor and counsel for intervener, the State of Kansas, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein be, and the same is hereby allowed, and that a certified

transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of One Thousand Dollars. John C. Pollock, Judge. Dated Sept. 19th, 1922.

[File endorsement omitted.]

54

In United States District Court.

**Stipulation for Transcript of Record.**

[Filed Oct. 3, 1922.]

It is hereby stipulated by and between the Central Trust Company of New York, and the Receiver of the Consumers Light, Heat & Power Company, and the Kansas Natural Gas Company, and the Public Utilities Commission of Kansas, that the Clerk of this court be directed to prepare and certify the transcript of the record in the above entitled case for the use of the Supreme Court of the United States by including therein the following:

Petition of J. G. Swan, Receiver of the Consumers Light, Heat & Power Company of Topeka, Kansas, filed April 19, 1922.

Temporary Restraining Order issued April 19, 1922.

Order granting permission to Public Utilities Commission of Kansas to file intervening petition, filed May 5, 1922.

Intervening Petition of Public Utilities Commission of Kansas filed May 6, 1922.

Answer of defendant Kansas Natural Gas Company to Intervening Petition of Public Utilities Commission.

Stipulation providing for an amendment to the Intervening Petition of the Public Utilities Commission for the State of Kansas.

Answer of defendant J. G. Swan, Receiver of the Consumers Light, Heat & Power Company, to the amended intervening petition of the Public Utilities Commission of the State of Kansas.

Order of submission of the Question raised by the Intervening Petition of the Kansas Public Utilities Commission and the Answers of Defendants thereto.

Decree of Court denying the relief sought in the Intervening Petition of Public Utilities Commission, filed June 15, 1922.

Petition for Appeal.

Assignment of Errors.

Citation for Appeal.

55 Order Granting Appeal. F. S. Jackson, Attorney for Public Utilities Commission of Kansas, Appellant. H. O. Caster, Robt. D. Garver, Attorney- for Defendant, Kansas Natural Gas Company. Thomas F. Doran, Attorney for Receiver of Consumers Light, Heat & Power Company. Blair & Lillard, Attorney- for Central Trust Company of New York.

## Clerk's Certificate.

The intervenor requests that the following pleadings be added to the above record on appeal.

Answer of Kansas Natural Gas Co. to petition of G. J. Swan, Receiver, filed May 1st, 1922.

Reply of G. J. Swan, Receiver of the Consumers Light, Heat & Power Co. to answer of the Kansas Natural Gas Co. to petition of G. J. Swan, Receiver, filed April 19, 1922; filed May 3, 1922. William A. Smith, Asst. Atty. for Public Utilities Commission of Kansas.

[File endorsement omitted.]

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In United States District Court.

## Clerk's Certificate.

UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the foregoing to be true, full and correct copies of so much of the record and proceedings in Case No. 75-N, entitled Central Trust Company of New York vs. The Consumers Light, Heat and Power Company, in said Court, as is called for by the Stipulation filed herein.

I further certify that the Original Citation is attached hereto and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District of Kansas, this 5th day of October, 1922. [Seal of District Court U. S., District of Kansas.] F. L. Campbell, Clerk.

Endorsed on cover: File No. 29,202. Kansas D. C. U. S. Term No. 652. The State of Kansas on the relation of Fred S. Jackson, attorney for the Public Utilities Commission of the State of Kansas, etc., appellant, vs. The Central Trust Company of New York, Kansas Natural Gas Company, and Consumers Light, Heat & Power Company. Filed October 19th, 1922. File No. 29,202.

(8907)